

Various nationwide, state, and local laws provide certain workers experiencing postpartum depression the right to receive accommodations at work, take leave, and be free from workplace discrimination. These laws set the floor—not the ceiling—on employers’ obligations, so be sure to consult your employer’s policies (and, if you are in a union, the collective bargaining agreement) for any additional protections your employer may provide beyond these legal obligations.

What is postpartum depression?

Postpartum depression can begin during pregnancy (sometimes called “prenatal,” “perinatal,” or “antenatal” depression) or after birth.

According to the American College of Obstetrics and Gynecologists, some “9% of pregnant women and 10% of post-partum women met the criteria for major depressive disorders,”¹ though estimates of postpartum depression prevalence range as high as 25%.² Symptoms can include changes in sleep or appetite; difficulty concentrating; lethargy; feelings of sadness, guilt, or worthlessness; and suicidal ideation.³

Those who experience depression at any stage of pregnancy may be entitled to the workplace legal protections outlined in this fact sheet.

Do I have the right to workplace accommodations for postpartum depression?

- Under the nationwide **Pregnant Workers Fairness Act** (“PWFA”), you have the right to reasonable accommodations at work for any physical or mental condition related to pregnancy, childbirth, or a related medical condition. You do not need to have a pregnancy-related *disability* in order to receive an accommodation, unlike the ADA (see below). Reasonable accommodations can include more flexible breaks, modified work schedules, time off to attend mental healthcare appointments, options for remote work or working from home, and more.⁴ You have a right to such accommodations, unless providing an accommodation would create an undue hardship (i.e., be very difficult or expensive) on your employer.⁵ Learn more [here](#).
 - *Am I covered?* You are likely covered if you work for an employer with 15 or more employees.
- Under the nationwide **Americans with Disabilities Act** (“ADA”), you may also have the right to reasonable accommodations at work, such as a modified work schedule, transfer to a less strenuous position, or work from home,⁶ for postpartum depression.⁷ To be considered a qualifying “disability” under the ADA, your postpartum depression must “substantially limit” a major life activity, such as sleeping, eating, concentrating, or working.⁸ If your postpartum depression meets the ADA definition, then you have a right to reasonable accommodations, unless providing an accommodation would create an undue hardship for your employer. Learn more [here](#).
 - *Am I covered?* You are likely covered if you work for an employer with 15 or more employees.
- You may also have the right to reasonable accommodations under the **Pregnancy Discrimination Act** (“PDA”), which prohibits your employer from treating you worse than other

employees just because you are pregnant or have a condition related to pregnancy. Postpartum depression is a condition related to pregnancy under the PDA.⁹ Therefore, you may have the right to an accommodation for postpartum depression (e.g., flexible start time, transfer to a quieter workspace, or options for remote work or working from home) if your employer provides accommodations to other employees similar in their ability or inability to work. Learn more [here](#).

- *Am I covered?* You are likely covered if you work for an employer with 15 or more employees.
- In addition, you may have rights under state and local laws, depending on where you work:
- **Pregnant workers fairness act:** If your state or locality has passed a pregnant workers' fairness law (sometimes called a "PWFA") giving workers an affirmative right to accommodations for pregnancy, childbirth, and related medical conditions, you likely have the right to a reasonable accommodation at work for postpartum depression, even if your depression is not severe enough to be considered a disability under the ADA or you work for an employer with fewer than 15 employees.¹⁰ Learn more [here](#).
 - **Disability law:** If your state or locality has a disability accommodation law and your postpartum depression meets the law's definition of "disability," you may have the right to accommodation, even if you work for an employer with fewer than 15 employees. Learn more [here](#).

Do I have the right to take leave for postpartum depression?

- The **Family and Medical Leave Act** ("FMLA") gives eligible workers the right to take unpaid, job-protected leave to care for their own "serious health condition" (among other purposes).¹¹ Postpartum depression may be considered a "serious health condition" under the FMLA.¹² Learn more [here](#).
- *Am I covered?* You are covered if you work for an employer with 50 or more employees within a 75-mile radius of one another, you have worked for your employer for at least one year, and you have worked at least 1,250 hours in the prior 12 months.
 - *How much unpaid leave can I take?* You can take up to 12 weeks total of FMLA leave per year.
- Under the **Pregnant Workers Fairness Act** ("PWFA"), you may also have the right to unpaid leave as a reasonable accommodation, unless such leave would create an undue hardship for your employer. For more information about PWFA coverage and eligibility, see "Do I have the right to an accommodation?" above.
- Under the **Americans with Disabilities Act** ("ADA"), you may also have the right to unpaid leave as a reasonable accommodation, unless such leave would create an undue hardship for your employer. For more information about ADA coverage and eligibility, see "Do I have the right to an accommodation?" above.
- In addition, you may have rights under state or local law, depending on where you work:
- **Medical leave or temporary disability insurance:** If your state or locality has a pregnancy leave law,¹³ (paid or unpaid) medical leave law, or short-term disability law, you may have the right to job-protected leave and/or partial wage replacement for time-off due to postpartum depression. Such leave (whether paid or unpaid) is usually a longer-term leave of up to a few months (though it can often be taken in smaller increments). Learn more [here](#).

- **Paid sick leave:** If your state or locality has a paid sick leave law, you may be entitled to paid sick time for time-off due to postpartum depression. A paid sick time law typically provides short-term time off, often in increments of hours or days. Learn more [here](#).
- **Pregnant workers fairness act:** If your state or locality has passed a pregnant workers' fairness law, you may have an affirmative right to unpaid leave as a reasonable accommodation for pregnancy, childbirth, and related medical conditions.

Do I have the right not to be discriminated against by my employer because I experience postpartum depression?

- Under the **Pregnancy Discrimination Act** ("PDA"), employers cannot treat employees affected by pregnancy or related conditions differently from other employees similar in their ability or inability to work. Postpartum depression is a condition related to pregnancy under the PDA. If an employer treats a worker differently because they have postpartum depression—for example, by refusing to accommodate them despite accommodating other workers, cutting their hours, demoting them, or firing them—such treatment may violate the PDA. Learn more [here](#).
 - *Am I covered?* You are covered if you work for an employer with 15 or more employees.
- Under the **Americans with Disabilities Act** ("ADA"), employers cannot treat employees less well (e.g., firing or demoting them) just because they have a disability, or are regarded as having a disability. Learn more [here](#).
 - *Am I covered?* You are likely covered if you work for an employer with 15 or more employees.
- Under the **Pregnant Workers Fairness Act** ("PWFA"), employers cannot treat employees less well (e.g., refusal to hire, firing, and demoting them) just because they request or use an accommodation. Employers are also prohibited from retaliating against workers who seek or use accommodations.¹⁴
 - *Am I covered?* You are likely covered if you work for an employer with 15 or more employees.
- Many states and localities also have **antidiscrimination laws** that prohibit discrimination (i.e. treating someone less well) on the basis of disability, pregnancy, sex, familial status, and/or caregiver status.¹⁵ Discrimination due to postpartum depression may be protected under these laws, even if you work for an employer with fewer than 15 employees. Learn more [here](#).

Additional Resources

- If you have questions, call A Better Balance's free and confidential legal helpline at 1-833-NEED-ABB (1-833-633-3222) or contact the helpline [here](#).
- For more information about the laws where you work, visit A Better Balance's Workplace Rights Hub [here](#).

The information provided in this fact sheet does not constitute legal advice. It is always advisable to consult an attorney about your individual circumstances.

¹ Am. Coll. of Obst. & Gyn., *Cmte. Op. No. 757: Screening for Perinatal Depression*, 132(5) J. OBST. & GYN. e208 (Nov. 2018), https://journals.lww.com/greenjournal/Fulltext/2018/11000/ACOG_Committee_Opinion_No_757_Screening_for.42.aspx.

² See Tiffany Field, *Prenatal Depression Risk Factors, Developmental Effects & Interventions: A Review*, 4(1) J. PREG. CHILD HEALTH (Feb. 27, 2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5502770/>.

³ See, e.g., Am. Coll. of Obst. & Gyn. at e209; Ctrs. For Disease Control & Prev., *Depression During & After Pregnancy* (May 14, 2020), <https://www.cdc.gov/reproductivehealth/features/maternal-depression/index.html>.

⁴ See H.R. Rep No. 117-27, at 22 (2021-22) (noting that pregnancy-related health risks can be addressed through “simple accommodations” such as flexible hours and extra breaks).

⁵ See 42 U.S.C. § 2000gg(7) (adopting the ADA’s definition of “undue hardship”); 42 U.S.C. § 12111 (10) (A-B) (1990) (“The term ‘undue hardship’ means an action requiring significant difficulty or expense.”).

⁶ For other examples of reasonable accommodations for postpartum depression, see Melanie Whetzel, *Postpartum Depression*, JOB ACCOMM. NETWORK, <https://askjan.org/articles/Postpartum-Depression.cfm>.

⁷ See, e.g., *Hostettler v. College of Wooster*, 895 F.3d 844, 854 (6th Cir. 2018) (holding that plaintiff’s postpartum depression and separation anxiety constituted a disability under the ADA because they “substantially limited . . . her ability to care for herself, sleep, walk, or speak”); *Reilly v. Revlon, Inc.*, 620 F. Supp. 2d 524, 540–41 (S.D.N.Y. 2009) (recognizing that plaintiff “clearly raised genuine issues of fact” as to whether her postpartum depression constituted an ADA disability); Equal Emp. Opp. Comm’n, No. 915.003, *Enforcement Guidance: Pregnancy Discrimination & Related Issues*, 2015 WL 416223, at *20 (June 25, 2015) (noting that “[i]mpairments involving other major bodily functions can also result in pregnancy-related limitations”—such as “depression”—sufficient to constitute a disability under the ADA); see also Equal Emp. Opp. Comm’n, *The Lash Group Will Pay \$75,000 to Settle EEOC Disability Discrimination Lawsuit: Consulting Company Fired Employee Because of Post-Partum Depression Federal Agency Charged* (Mar. 18, 2015), <https://www.eeoc.gov/newsroom/lash-group-will-pay-75000-settle-eeoc-disability-discrimination-lawsuit> (documenting EEOC settlement of disability discrimination lawsuit filed on behalf of worker denied reasonable accommodation for postpartum depression under the ADA); Equal Emp. Opp. Comm’n, *MISO to Pay \$90,500 to Settle EEOC Disability Discrimination Lawsuit* (July 11, 2013), <https://www.eeoc.gov/newsroom/miso-pay-90500-settle-eeoc-disability-discrimination-lawsuit> (quoting EEOC regional attorney for the proposition that “[t]he ADA provides protections to employees suffering the debilitating effects of postpartum depression”).

⁸ See 42 U.S.C. §§ 12102(1)(A), (2)(A); see also 29 C.F.R. § 1630.2(j)(3)(iii) (noting that “it should easily be concluded that the following types of impairments will, at a minimum, substantially limit the major life activities indicated[:] . . . major depressive disorder . . . substantially limit[s] brain function”); Equal Emp. Opp. Comm’n, *Depression, PTSD, & Other Mental Health Conditions in the Workplace: Your Legal Rights* (Dec. 12, 2016), <https://www.eeoc.gov/laws/guidance/depression-ptsd-other-mental-health-conditions-workplace-your-legal-rights> (“If you have depression, post-traumatic stress disorder (PTSD), or another mental health condition, you . . . may have a legal right to get reasonable accommodations that can help you perform and keep your job.”).

⁹ See, e.g., *Hicks v. Tuscaloosa*, No. 7:13-cv-02063-TMP, 2015 WL 6123209, at *18 (N.D. Ala. Oct. 19, 2015) (“There is no serious question that post-partum depression is a ‘medical condition’ related to pregnancy and childbirth.”); *Reilly*, 620 F. Supp. 2d at 544 (“Postpartum depression is a condition related to pregnancy and accordingly falls within the PDA’s protections.”).

¹⁰ For example, Illinois employees are entitled to reasonable accommodations for “any medical or common condition related to pregnancy or childbirth”—including “post-partum depression”—unless it would impose an undue hardship. 56 Ill. Admin. Code §§ 2535.20, 2535.100. Likewise, Connecticut employees are entitled to reasonable accommodations for pregnancy-related conditions, including postpartum depression, unless it would create an undue hardship. See Conn. Comm’n Human Rights & Opp., *Legal Enforcement Guidance: Pregnancy, Childbirth, or Related Conditions at Work: Questions and Answers for Employers*, <https://portal.ct.gov/-/media/CHRO/20190412RevisedProposedPregnancyGuidancepdf.pdf> (last accessed Apr. 13, 2021).

¹¹ 29 C.F.R. § 825.112(a)(4).

¹² See, e.g., *Collins v. NTN-Bower Corp.*, 272 F.3d 1006, 1008 (7th Cir. 2001) (noting that “clinical depression . . . certainly meets” the definition of “serious health condition” under the FMLA); H. Rep. No. 103-8, at 40 (1993) (noting that “clinical depression” may constitute a “serious health condition”); S. Rep. No. 103-3, at 29 (1993) (same); see also 29 C.F.R. § 825.120(a)(4) (“The expectant mother is entitled to FMLA leave . . . for her own serious health condition following the birth of the child.”).

¹³ For example, California workers are entitled to pregnancy disability leave “if, in the opinion of her health care provider, she . . . needs to take time off for . . . post-partum depression.” Cal. Code Reg., tit. 2, § 11035(f); see also Cal. Code Reg., tit. 2 § 11050(e); Cal. Dep’t Fair Emp. & Housing, *Your Rights & Obligations as a Pregnant Employee* (Jan. 2021), https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2020/12/Your-Rights-and-Obligations-as-a-Pregnant-Employee_ENG.pdf.

¹⁴ 42 U.S.C. § 2000gg-1(3), (5); See Equal Emp. Opp. Comm’n, *What You Should Know About the Pregnant Workers Fairness Act*, <https://www.eeoc.gov/wysk/what-you-should-know-about-pregnant-workers-fairness-act> (last accessed on June 07, 2023).

¹⁵ For example, New York City prohibits discrimination on the basis of pregnancy-related medical conditions, including post-partum depression. See 47 R.C.N.Y. § 2-01; NYC Comm’n Human Rights, *Legal Enforcement Guidance on Discrimination on the Basis of Pregnancy* 1, 2 (2016), https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/Pregnancy_InterpretiveGuide_2016.pdf.